EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
Cred Inc.,	Case No. 22-10534 (CTG)
	(Jointly Administered)
	Courtroom No. 7
	824 Market Street
	Wilmington, Delaware 19801
Debtor.	
	Thursday, February 9, 2023
	2:00 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Cred Liquidation Trust: Jonathan Kass, Esquire
REID COLLINS & TSAI LLP
300 Delaware Avenue, Suite 770
Wilmington, Delaware 19801

Angela Somers, Esquire
REID COLLINS & TSAI LLP
420 Lexington Avenue
Suite 2731
New York, New York 10170

(APPPEARANCES CONTINUED)

Audio Operator: Theresa Mistretta

Transcription Company: Reliable
The Nemours Building
1007 N. Orange Street, Suite 110
Wilmington, Delaware 19801
Telephone: (302)654-8080
Email: gmatthews@reliable-co.com

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APPEARANCES (CONTINUED):

For Lockton: Renita Sharma, Esquire
QUINN EMANUEL URQUHART & SULLIVAN
51 Madison Avenue
22nd Floor
New York, New York 10010

For Uphold HQ: Michael Delaney, Esquire
BAKER & HOSTETLER LLP
Key Tower
127 Public Square, Suite 2000
Cleveland, Ohio 44114

INDEX

(Proceedings commence at 2:00 p.m.)

THE COURT: Be seated.

(Participants confer)

THE COURT: So good afternoon. We are here in In Re Cred, which is Case Number 20-12836.

I'm happy to hear from counsel.

MR. KASS: Good afternoon, Your Honor. Jonathan Kass of Reid, Collins & Tsai. Making -- arguing the motion today will be my partner Angela Somers from the New York office.

THE COURT: Okay. Very well.

MR. KASS: With your permission.

THE COURT: Certainly.

MS. SOMERS: Good afternoon, Your Honor. Angela Somers, Reid, Collins & Tsai, on behalf of the Trustees of the Cred Liquidation Trust.

The trust is here today for clarification of a July 19, 2022 bench ruling. As explained in our pleadings, we are here as a result of a notice of removal having been filed by Lockton Companies in the District Court for the Northern District of California.

In December of 2022, the trustees commenced a case in California State Court against Lockton based solely on state law claims. The claims that were the basis of the suit were those of CredEarn customers who lent their crypto to

Cred and never received payment back.

In making that loan, those customers relied on blatantly false representations about insurance made by Lockton and posted on Cred's website with the Lockton logo. Certain of those customers were -- claims were assigned to the trust. Those are the claims pursued by the trustees in this California litigation.

In California, Lockton seeks to remove the state court case to Federal Court on the grounds that the plan needs to be interpreted; and, therefore, related to bankruptcy jurisdiction exists. There are no other grounds for federal court jurisdiction.

The trustees do not believe there is related to jurisdiction based on the distant, rather than close, nexus between the state law claims and Cred's bankruptcy case. The trust, therefore, did not want to take the risk of the case being dismissed at a later point in time for lack of subject matter jurisdiction and, therefore, commence the case in California.

Lockton argues in the removal notice that the Bankruptcy Court did not approve the assignment of third-party claims to the trust. Based on that faulty premise, Lockton argues in the notice of removal, as part of the Lockton litigation, the California District Court will need to interpret the plan of reorganization of Cred; and, thus,

related to jurisdiction exists.

The trust was naturally surprised at this argument because it understood this issue had been, in fact, resolved by the Bankruptcy Court at the July 19, 2022 bench ruling. The trust's general bankruptcy counsel -- and just for clarity, we are special counsel for purposes of this litigation -- which handled the issue -- and the client attended -- all understood the result of the July 19 hearing.

The transcript is also clear that Judge Dorsey decided that the trust could acquire third-party claims and pursue them if done as part of preference settlements, and that decision is not dicta.

The assignment motion, which was the motion heard in July, specifically addressed assignments of third-party claims. In the proposed order submitted by the trust at that time, the trust asked for a decision that the trust could adjudicate assigned third-party claims, pursuant to the plan and trust agreement. The trust argued this point in the assignment motion at the July 19 hearing. While the trust believed it had such authority in the plan, as belts and suspenders, explicit authority was also squarely requested in the assignment motion.

There were some additional features considered at the July 19 hearing that the Judge did not approve. Those were more far-reaching. They included a ten percent bumped

up -- bump-up of the allowed claim of customers who assign their claims to the trust and the use of a portal to generally solicit all creditors.

After much back-and-forth and debate on the plan's language and the meaning of it and whether it authorized acquisition of claims by the trust, Judge Dorsey decided the following:

First, pursuant to the plan, the trustee has the right to take an assignment of third-party claims and adjudicate those claims.

In the transcript, Judge Dorsey ruled in connection with the plan:

"I think, in terms of authority of the trust to acquire third-party claims, the trust would seek, could seek, or could obtain assignment of third-party claims, and it could then pursue them on behalf of creditors of the estate."

Judge Dorsey also decided when the trust could and could not exercise that right. In response to the trust's counsel saying why was the language in the plan in there if the trust could not adjudicate assigned claims, Judge Dorsey responded you can use that right -- and "that right" is not literally what the Court said, but he's referring to that right -- you can use that right in the scenario you gave me where you're trying to compromise a claim, a preference you have against some one. And then he added:

"They say, hey, I got a third-party claim against somebody, I'll give it to you in return for you forgiving my preference, and you say okay. Now you've got that claim."

He also ruled, with respect to acquisition of the claims of individual claimants:

"I think that's something that can be done, but it's done on a one-off basis, so it's clear."

Judge Dorsey then ruled that the trust could not offer the creditors a ten percent bump-up of their allowed claim.

He also ruled without prejudice that the trust could not acquire the claims by soliciting creditors through the portal that was proposed, rather than as part of a preference settlement.

Judge Dorsey made clear this limitation on certain assignments does not include preference targets. I'm not talking about preference targets, he said, I'm talking about someone who is just a creditor of the estate.

These rulings are not dicta. Having first decided that the trust could acquire third party claims, and then that acquisition was permissible on a one-off basis as part of preference settlements, the Court addressed the remaining issues of the bump-up and the portal. The Court would never have gotten to the second two issues without having decided that assignment was permissible as part of the preference

settlements.

In deciding whether a court's statement is dicta, courts consider the following:

Was the issue decided central to the Court's resolution of the matter before the Court?

Was the issue decided a predicate for another decision made by the Court; or, instead, was the issue peripheral to the decision?

The cases we cite provide examples of why this Court should conclude the assignments were not dicta.

In McDonald, the Third Circuit Court of Appeals addressed the issue of whether, in a Chapter 13 case, a wholly unsecured mortgage was subject to the Bankruptcy Code's anti-modification clause of Section 1332(b)(2).

In doing this, the Third Circuit engaged in an analysis of Nobelman, a Supreme Court case. The Supreme Court in Nobelman held that, when there was a single mortgage on a property greater than the value of the property, the debtor could not split the mortgage and treat the unsecured part different than the secured part and, therefore, not subject to the anti-modification clause. In making this decision, the Court foudn that Section 506(a) applied to an under-secured mortgage because part of the claim was secured. In McDonald, the debtor argued that, because 506 -- which is a predicate to 1332, which refers to a secured claim -- did

not apply to a wholly unsecured mortgage, the anti-modification provision did not apply.

The lender argued the 506 ruling was dicta, and the Court found it was not dicta because it was a statement in a judicial opinion that could not have been deleted without seriously impeding the analytical foundation of the holding.

In Malinka (phonetic) -- and that's a bankruptcy case in Delaware -- the movant shareholders sought to use 1444 of the Bankruptcy Code, and that's the section that allows one to set aside a confirmation order. And the question was: Can you do it only if there is fraud? In deciding the Chapter 11 issue, the Court looked to Fesk (phonetic) a Third Circuit case, and that's a Chapter 13 case -- Chapter 13 has a similar provision, which I'm sure you're aware of, 1330, to set aside that confirmation order.

In determining the 1330 issue, the Court in Fesk looked at 1144 and explored the history of the two code sections and discussed them together. The Fesk Court then held grounds to set aside a confirmation order were limited to situations where there was fraud.

The McDonald Court tried to argue that that decision in Fesk did not apply because they're a Chapter 11 case and Fesk is a Chapter 13 case. But because the Court analyzed the two sections together, went into the legislative history, included the reasoning in them, even in a case where

they were addressing a completely different code section not applicable to Chapter 13 cases, the Court found that was not dicta because it was important in the Court's reasoning.

These cases make clear the ruling of the Bankruptcy Court here allowing the trust to obtain assignment of third-party claims was not dicta; instead, it was essential to the ultimate ruling.

Based on this, Your Honor might ask, well, why do you need clarification. That's a good question. And the answer is that a court has discretion to clarify its own ruling. And this is a bench ruling, so the ruling is contained in a long transcript. And the Bankruptcy Court is particularly well suited to understand the record since it understands bankruptcy issues and third-party assignments to a bankruptcy-related trust.

We thought requesting clarification of the Court's ruling was a better route that allowing Lockton to capitalize on a nonissue to support its removal efforts. While our position seemed simple and straightforward, somehow Lockton does not agree. Whether or not Your Honor considers Lockton's argument, the conclusion that the July 19 bench ruling permitted the assignment as part of a preference settlement should not change. It's clearly supported by the transcript.

This leads me to my next point, which is: Should

this Court hear what Lockton has to say? The trust believes the answer to that question is unequivocally no. This Court should clarify the July 19, 2022 bench ruling without hearing the arguments of Lockton because Lockton has no standing.

Most courts conclude that letting a defendant weigh in on issues like this is like putting a fox in charge of the henhouse. We cite those cases; they include Sweeney (phonetic), and Phillips (phonetic), and other outside the Third Circuit. In those cases, a party wanted to reopen a case and defendants objected. Those decisions point to several cases and hold, in a state court litigation, where the proceeds of an award will be distributed to creditors, defendants have no standing to object to the reopening of a case.

THE COURT: Okay. But if you're right on the merits, it won't matter if I listen to them, right?

MS. SOMERS: The merits of the --

THE COURT: Your entitlement to the clarification. If you're right that --

MS. SOMERS: Yes.

THE COURT: -- you're entitled --

MS. SOMERS: Yes. Yes.

THE COURT: Right? And so --

MS. SOMERS: I agree with you.

THE COURT: -- throwing them out on standing only

changes the outcome in a case in which you were wrong on the merits --

MS. SOMERS: Yes.

THE COURT: -- right?

MS. SOMERS: Yes, Your Honor, certainly. And we're not afraid to hear their argument. We're -- that's why we argued it fully in the briefs. You know, if Your Honor would like to hear it, he can hear it.

THE COURT: Okay. I understand. I understand your argument on standing.

MS. SOMERS: Yes.

THE COURT: I didn't -- and one of them is a creditor, too, right?

MS. SOMERS: Uphold --

THE COURT: One of the objecting parties.

MS. SOMERS: Uphold is definitely in a different situation. But as Your Honor sees from our papers, we're arguing that, because they joined in the Lockton objection and because they -- their entire objection is, you know, similar to Lockton and intertwined with Lockton, that their standing is equally as --

THE COURT: But they are a creditor, right?

MS. SOMERS: You're right --

THE COURT: So that --

MS. SOMERS: -- Your Honor.

THE COURT: -- requires me to engage in like a psychoanalysis about --

MS. SOMERS: Yes.

THE COURT: -- why it --

MS. SOMERS: That --

THE COURT: -- is that --

MS. SOMERS: Your Honor, I admit that point.

THE COURT: Okay.

MS. SOMERS: Okay. So I had a few other cases to mention. In Miller -- these are cases, you know, not in the Third Circuit. They say it's strange to give defendant a voice as to whether or not they'll get sued.

In Campbell Gracewell Hospital (phonetic), the Court found a desire to avoid getting sued is not a legally protected right.

In ES Bankast (phonetic), the Court said a defendant's -- a defendant is antithetical to creditors and this view should not be heard.

And I know Your Honor argued Global Industrial, I did notice that.

And in Flint Coat (phonetic), another case that supports the debtors' position, they cited that case. And the Court there found the defendant, a litigation target with a variety of claims against it, including fraudulent conveyance, breach of fiduciary duty, and other claims, had

no standing to be heard on the debtor's motion to abandon the alter ego claim. And in that case, oddly, you would think that the defendant is happy you're abandoning an alter ego claim. But what happened is, under state law, it enhanced the claim of the other two plaintiffs. You seem to be familiar with this. And so the Court said we're not going to hear them as a party-in-interest. Whatever liability the defendant may have was already created by its conduct before the petition and nothing here would change that.

Here, the trustees merely request that this Court clarify what the Bankruptcy Court has determined. The decision was made. Clarifying simply creates more certainty as to what has already occurred.

And just, you know, one last point, which is, in Global Industrial, we find that that further supports our view because the situation there was so different with the insurance policies going into the trust and the issues of collusion between the claimants. And so, of course, that's a situation that's very different from ours.

We recognize that Uphold stands in a different position. You're right, Your Honor, you shouldn't have to engage in a psychoanalysis of Uphold. At the same time, I don't think there's one scintilla of argument in Uphold's claim that gives any deference or concern to a very valuable cause of action that would be impacted by the lack of

clarification. So that certainly creates some suspicion, I will just say.

With that, Your Honor, I will just say that we feel clarification is necessary and based on the record and within the scope of 105. And that concludes our --

THE COURT: Okay.

MS. SOMERS: -- main argument.

THE COURT: Thank you, Ms. Somers. That was --

MS. SOMERS: You're welcome.

THE COURT: -- helpful.

Let me hear from the party opposing the relief.

MS. SHARMA: Thank you, Your Honor. Renita Sharma from Quinn Emanuel on behalf of Lockton.

Unless Your Honor prefers otherwise, I'd like to begin by addressing the standing issue.

THE COURT: Sure.

MS. SHARMA: Lockton is a party-in-interest in this particular motion, Your Honor. The trustees' reading of Section 1109 would limit parties-in-interest to enumerated categories like creditors. But "party-in-interest" is deliberately a broader term, and the list of potential parties in 1109(b) is not exclusive.

Contrary to the trustees' argument, Lockton is not a stranger to this issue. It has a legally protected interest that could be affected by this proceeding; namely,

it -- the interest in whether the trustee is the correct party to be bringing the claims brought in California.

THE COURT: Okay. But I think -- the way I take the standing argument, for what it's worth, is -- isn't a literal standing issue because, obviously, if you were to prevail on it -- not an Article III standing issue. You've got a concrete stake, right? It affects their ability to sue you, and I understand that.

To me, the issue where I'm at least doubtful, but I'm not -- I'm going to listen on the merits, in any event. But the question -- the argument to me that -- at the end of the day, the issue you're making, I think, is that the trust is not permitted to bring these claims.

The trust -- you're invoking, essentially, the trust documentation. And that is about protecting the beneficiaries of the trust. It binds the beneficiaries of the trust and the trustee and is an agreement among them about their respective rights. And whether the trustee is exceeding its rights under the trust document, you're -- it's a sort of zone of interest sort of analysis, right? Which is the trust document wasn't there to protect you; and so, therefore, it's not for you to say that the trustee is behaving in a manner that's inconsistent with the trust documents. If the trustee -- if the beneficiaries have a problem with that, we'll hear them, but it's not for the

person against whom the trust is acting to say that -- to enforce the trust agreement. That's essentially the argument.

Look, I -- I'm -- we have a creditor here, so I'm not sure it makes any difference. I think a joinder is a joinder, and so I'm not sure it matters whether you have standing or not, and I'm going to listen to you, in any event. But in any event, I do think that what you've said about standing hasn't responded to the real concern about standing.

MS. SHARMA: Fair enough, Your Honor, and I won't belabor the point if you're prepared to hear the rest of the argument. But I would make two points in response:

First is that it does actually impact Lockton's ability to defend itself in California if it doesn't know whether the right party is there. You know, it's a very different case in California if we don't have the bankruptcy trustee. First of all, we wouldn't have this issue about capacity to sue at all.

Second of all, there are a number of questions that Lockton has about the assignments themselves about which we've sought discovery here and been denied, that we may not get in California; things like the proofs of claim, which were confidential here, and we haven't yet obtained. The trustee has, at a very basic level, not given us document

preservation notices, not given us the assignment information itself, so we don't really know who we'll be fighting in California and we may never get the opportunity to get those documents if the issue is decided here and the California Court decides that it's closed and that the bankruptcy issues are sort of separate and apart from what we're fighting there.

So Lockton is here, really, to make sure that our issues -- that our rights are protected somewhere. And if Your Honor is prepared to hear us, I'll leave that part of the argument aside.

THE COURT: Okay.

MS. SHARMA: In turning to the merits themselves, Your Honor, the trustees' position is that they seek merely a clarification of Judge Dorsey's remarks. And obviously, Lockton wasn't given notice of that motion, so did not appear. But having reviewed the transcript, it's clear to us that the trustee is selectively reading Judge Dorsey's remarks.

First of all and at a most basic level, the ruling the Judge Dorsey made in July was to deny the trustees' motion. That was the only decision that was actually reached.

And I think it's noticeable that, reviewing the transcript, Judge Dorsey referred to the hearing as a

"conversation." There was a lot of discussion in the hearing about other hypothetical ways that the trustee could bring certain claims that were assigned to it.

But at the end of the day, what Judge Dorsey ruled was that they couldn't do it the way they had asked for in that motion. And if they would like to seek the assignment of claims, they should come back and bring a motion before him and give him the opportunity to --

THE COURT: So --

MS. SHARMA: -- rule on --

THE COURT: -- let me --

MS. SHARMA: -- it then.

THE COURT: Let me ask this question, right? The trust is a post-bankruptcy entity. We don't -- I don't have a company that's in bankruptcy anymore, right? And what would be the reason why the trust would need -- I understand if you want to mess with the respective entitlements of the different claimants. That implicates the claims allowance process, that's done in bankruptcy. I understand why you would need court approval for that. But if you just otherwise want to acquire a claim, we're a post-bankruptcy entity. Why does it -- why would they need to come here anyway?

MS. SHARMA: Well, one, Your Honor, I would say they did come here, which seems to imply that the trustee

thought they should seek authority.

THE COURT: Okay. But why -- maybe they were wrong.

MS. SHARMA: I think it goes back to many of the issues raised by the U.S. Trustee in July, which were about notice. We're --

THE COURT: Yeah, but that was because you were affecting the relative slice of the pie that each of the claimants had, and so that certainly required notice to the two affected -- you were going to dilute the people who didn't transfer and that required notice to them. I get that.

But let me ask this question. I mean, is there any conceptual difference between -- in terms of the need to come to Bankruptcy Court, between a post-bankruptcy litigation trust on the one hand and a reorganized debtor on the other?

MS. SHARMA: In this particular circumstance, I don't think so, Your Honor.

THE COURT: Okay. So imagine, a year ago, I confirmed a plan for the Acme Widget Company, and the Acme Widget Company made round widgets. And the company wakes up the next day and says I want to make square widgets. Can a competitor of its, who's also in the square widget business, come into Bankruptcy Court and say, Judge, there's nothing in the plan that says they can make square widgets?

MS. SHARMA: I think, if the company was being sued, it would give them an interest. We're not just --

THE COURT: No, but --

MS. SHARMA: -- a third party.

THE COURT: Forget your standing for a second. Why does -- we're post-bankruptcy and they've made a business decision that this is what they want to do. Why do they -- we're out of bankruptcy. Why do they need to -- why do -- if the debtor wants to change -- go into a new line of business, that's -- post-reorganization, the reorganized debtor, post-confirmation, wants to go -- post-effectiveness, wants to enter a new line of business. Why does that -- why is that the Bankruptcy Court's business at all?

MS. SHARMA: The debt -- the trustee is still bound by the trust documents themselves, Your Honor. And I would say they came here pointing at a provision that says they have the right to adjudicate.

THE COURT: Okay.

MS. SHARMA: And what Judge Dorsey said and what trustees' counsel said was maybe we should have said "acquire," we didn't, we said "adjudicate." And to know what "adjudicate" mean, you should look at the committee minutes, you should look at extrinsic evidence.

And where we are now, Your Honor, no one has had the opportunity to see the extrinsic evidence that was

pointed to before Judge Dorsey. And so, conceptually, it may make no difference. And you know, maybe on a full record, Your Honor concludes that it doesn't. But here, where they're simply seeking clarification of a ruling that we don't think got to where they said it got, I don't think the record is clear for you to then, there -- at this point, make that decision.

THE COURT: Okay.

MS. SHARMA: Let me skip forward.

I then talked about some of the extrinsic evidence that I think would be useful for this Court, and it's, as you'd expect, much of the extrinsic evidence we sought in the RFPs.

Just one other point I wanted to make. The issue of preference claims versus the ten percent bump, as identified by the trustee, is sort of the nexus of Judge Dorsey's argument. There were actually other issues that he identified with the plan that I think still occurred here with the preference settlements; notably, that there could be disparate treatment between the creditors.

That's, you know, still true. And it's something the trustees' counsel brought up in response to Judge Dorsey's questions, that settling preference claims raises the same disparate treatment issues that Judge Dorsey found were a big problem with the ten percent bump; also, that

prosecuting the claims could decrease the distribution to beneficiaries, which the U.S. Trustee identified.

And finally, there's the issue that the trust may not be able to distribute the recoveries because the plan treatment only talks about distributing the assets of the estate. So all of those sort of still arise on this current plan and I think should be considered on a full record.

One other point I just wanted to clarify, Your Honor -- and this isn't really an issue before you. But the trustee said there were no other grounds for federal jurisdiction in Lockton's notice for removal, other than the one we're talking about today.

Related to jurisdiction is the basis for the removal motion, but there are actually three arguments Lockton makes for removal. Related to jurisdiction is a question for California, so I won't belabor them. But I just wanted to point out that not all of our bases for removal are implicated by your decision today.

THE COURT: Okay.

MS. SHARMA: I have nothing further unless Your Honor has any questions.

THE COURT: No. Thank you very much. Appreciate it.

(Participants confer)

MR. DELANEY: Unless you want to hear rebuttal

first.

THE COURT: No, they should --

MR. DELANEY: Do it all at once, I suppose.

Good afternoon, Your Honor. Michael Delaney of Baker Hostetler on behalf of Uphold.

And you know, we just want to kind of make a few points. We did join the objection that was raised by the Lockton entities. We also raised a couple further objections in our joinder.

The first thing I would like to address is this idea of standing. I know the Court already addressed this. But we are a creditor in the bankruptcy case and we are a beneficiary of the liquidating trust.

THE COURT: Right. And -- but what's your response to the assertion that, in wearing that hat, if you prevail today, you are -- you're making yourself, at least in that capacity, worse off?

MR. DELANEY: In the sense that we might be losing out on valuable claims?

THE COURT: Yeah.

MR. DELANEY: Well, Your Honor, I think that that raises several issues. As noted by counsel for Lockton, under the terms of the plan, the plan does not provide for the distribution of proceeds from third-party claims acquired by the trust to beneficiaries of the trust. So there's a

serious question. This was raised by, not only Uphold, but by the United States Trustee during the hearing on the assignment procedures motion.

And you know, under that plan, it says that beneficiaries will receive a pro rata portion of net distributable assets. "Net distributable assets" are the proceeds from liquidating the assets of the estate and the debtors, not assets acquired by --

THE COURT: Right.

MS. SHARMA: -- the liquidating trust.

THE COURT: Unless you think that, if you acquire these assets with assets that are otherwise property of the estate, that that becomes proceeds of property of the estate and, therefore, fits within the word "proceeds."

MR. DELANEY: I mean, potentially. But at the end of the day, the third-party claims are not, quote, "assets," as defined under the plan. So I don't see how that's beneficial to the beneficiaries of the trust.

And as we raised in response to the acquisition -- to the assignment procedures motion, the only way to make it beneficial would be to modify the plan. And right now, we're dealing with a plan --

THE COURT: Okay.

MR. DELANEY: -- that's been substantially consummated for almost two years, so that's just

impermissible.

But you know, and then I think I -- I just want to address -- there's some kind of suggestions that we're doing this for litigation, you know, advantage or whatever. The reality is we're being sued for eight hundred plus million dollars by the trust already. That litigation involves no third-party claims against it. So the ruling here today does not really affect us at a litigant, it affects us as a beneficiary of the trust. And we're objecting because we believe that the trustee has exceeded the scope of its authority under the trust agreement, that's why we're objecting, and because there's no clear benefit to the beneficiaries of the trust. I mean, that's clear -- that's the only reason we're here.

But to go back, I think that there's like a fundamental issue with the motion, and that was hint -- that was addressed by counsel for Lockton. There is no bench ruling that says that they get to acquire third-party claims via a settlement of preference actions. Now whether or not the plan just authorizes them to do that anyways, that's a separate point. But if you look at the motion on the assignment procedures, it is a motion seeking approval of definitive procedures, a certain set of procedures, right?

The Court, unequivocally, without reservation or qualification, denied that motion, except to say that it was

without prejudice to the trust bringing a subsequent motion. And further, the Court, when ruling on this motion, was discussing with the parties -- as the Court said, you know, I'm kind of playing mediator now -- was discussing with the parties different ways in which the parties might come to some sort of understanding as to --

THE COURT: Right.

MR. DELANEY: -- the acquisition of third-party claims.

THE COURT: So, to the extent you're right and -- why couldn't one just treat this motion to clarify as that motion? Here we are.

MR. DELANEY: Your Honor, I don't think that it would be appropriate at this point. Now, if the Court were to -- a couple of reasons. But if the Court were to continue this and allow discovery I think that we could get to a point where this is a motion to interpret the plan.

THE COURT: If there were a factual dispute that required discovery beyond just drawing an inference from what the plan already says.

MR. DELANEY: That is correct, Your Honor. You know, as the Court noted during the assignment procedures hearing, this provision is, at best, ambiguous; the one that they rely upon. This -- you know, it doesn't say "acquire" under the plan. It is ambiguous whether or not they have the

authority.

According to the notes there is nowhere in the plan that say that they can acquire third-party claims. Its all inferred from this adjudication clause. The trust has never submitted any evidence as to what that really means. Frankly, the trust can't submit evidence directly because they are not the plan proponents, and the committee was not the plan proponents. The plan proponent was the debtors.

So, the only person's intentions that matters is the debtors. And we haven't had the opportunity to conduct discovery about what the intention was of this provision. But that said, I think the inference that they can acquire third-party claims at all or, really, at large, you know, there is indications that that is not what the intent was. Although we do need discovery to get there, and we need the intrinsic evidence to submit and interpret the plan correctly, which hasn't been done and no party has had the opportunity to do that, there is indicia that that is not what was intended.

It is things like the definitions do not incorporate the concept of acquiring third-party claims. That the "liquidation trust assets" under the plan does not incorporate third-party claims acquired by the trust. And that the distribution to creditors is from net distributable assets. That does not incorporate proceeds from third-party

claims acquired by the trust.

So, I do think that there is indicia that that is not what was truly intended especially when you're talking about comparing this plan to plans like Woodbridge. I mean the trust counsel got up at the hearing, on the assignment procedure motion, and said I have no idea how we would have done this. Well, I do. If you wanted to do it with any bump or any procedures through the large-scale acquisition of third-party claims, you pull-up a copy of the Woodbridge plan and you put it in yours. I mean that plan was confirmed, and was deemed to be satisfactory under all applicable rules. That is how you would have done it.

The plan was confirmed long before the plan in this case was proposed. So, why didn't do that? I think that that speaks volumes to the fact that it wasn't what was intended. Had it been what was intended, they certainly knew how to do it. But I'm kind of getting beyond the scope of what we are here today for.

So, I think that because we don't -- back to my point, I don't think that there is bench ruling that this Court can kind of clarify. I think that for several reasons:

One, as I noted, the relief requested in the assignment motion was limited to the approval of those procedures. The idea of acquiring third-party claims via preference settlements was not addressed in the motion at

all. It was not addressed in the reply at all. The reply does refence preference actions, but it is in the form of an example of how trustees can settle things. It wasn't a, hey, we can acquire third-party claims by settling preference claims.

The first time its mentioned is during the hearing while the parties were, kind of, batting around ideas about how to resolve this after the Court really had found that the proposed procedures were DOA because it violated the plan in several ways.

So, I don't think that its fair to say that that was a ruling of the Court, but there is other issues. Because it wasn't raised in the motion nobody has briefed this. This has not been briefed by any party. Whether or not the acquisition of preference claims or third-party claims, via preference settlements, is permissible under the plan. It hasn't been briefed. It hasn't been ruled on. No evidence has been presented about the meaning of the plan in this regard. That is really, kind of, incontestable.

There is another issue with finding that this ruling is binding on anybody. As the Court noted at the hearing on the assignment procedures, notice of that motion deficient. How do we have a binding ruling with a deficient notice. There is only one ruling that could be issued when the notice is deficient, denial without qualification. It

can be without prejudice, but it can't -- you can't grant, you know, rights to a party when they don't properly notice the motion.

So, I mean, I think that that kind of resolves the issue about whether or not this can be a ruling at all. But even assuming that we look at those statements and think that its somewhat of a finding, or ruling, or whatever, you know, I believe its dicta. What we're dealing with here is a ruling by the Court saying, well, maybe you could kind of acquire third-party claims via preference settlements, but the ruling of the Court is denied without prejudice.

There is no order with findings of fact. There is no order saying that they can do this. There is a docket entry that says "denied without prejudice." That is it, that is the ruling of the Court. And so I don't see how it's a prerequisite to making an unqualified denial of the motion especially given the fact that the issue of acquiring third-party claims via preference settlements is not even raised in the motion. So, I mean we are like stretching here pretty far to get to that kind of place.

I already addressed, kind of, the defect and notice, and why that, kind of, hampers what can be done here. You know, from our standpoint, and I am going to selfishly talk about my client's rights, that there was no order entered saying this is what the plan means. We disagree with

that. How could we protect our rights? We have no order from which we could appeal that finding.

Now this is like a after the fact, we're going to try to sneak this ruling in. What are we supposed to do? If the Court finds today that clarifies a prior ruling, I mean, how do we appeal that? It, essentially, denies us the right to appeal. Setting aside the defective notice, I mean it denies us the right to have consideration of whether or not that is a correct interpretation of the plan because there has never been any finding of that factor or an appeal of an order.

So, that kind of goes to, you know, if we reach a conclusion, and going to Your Honor's point, that if there is no ruling to clarify then this is truly a motion to interpret the plan. I think that that presents several issues.

So, first of all, I don't think that its properly presented as such in the motion. I don't think its -- you know, its not called a motion to interpret the plan. They don't present any substantiation for their requested relief or the interpretation --

THE COURT: Sure they do with Judge Dorsey, who confirmed the plan, and he said on the record he thought it meant.

MR. DELANEY: I appreciate it, Your Honor, but that was -- I think that goes back to it being dicta, but

that was a statement made when he was playing mediator when deciding a motion that didn't raise the issue and at that point the trust presented no evidence about the --

THE COURT: Okay. So whether its holding or dicta strikes me as maybe the most bizarre thing I've ever heard because this is a trial Judge's comments from the record, from the bench. So, the notion of holding versus dicta like that matters when we've got an, otherwise, binding determination and the question is, is this binding on you.

I find myself, as a trial level Judge that nothing I say is really either holding or dicta because none of it binds anyone other then the parties in front of me. And so to me the question isn't really is it holding of dicta, it is, is this a reliable source of authority about what this plan did.

It seems to me like it probably is regardless of whether it was literally necessary to the decision or not. And in any event, you know, as far as the decision he was making went, Latin is not my first language, but the motion that those comments were the *ratio decidendi* of his ultimate ruling seems to make some sense to me.

So, I will hear you, but I guess it seems to me like a dog chasing its tail kind of argument.

MR. DELANEY: Well, Your Honor, I agree with you that it is strange to talk about dicta in this context

because there is no order, there is no opinion. Its being presented in the trust's motion as if it is an order and a ruling, which it isn't.

So, when we responded we said even if the Court would consider this ruling, which it's not, it's really dicta because there was a denial of the motion, an unqualified denial. So to say -- when we're talking about like the Third Circuit standard could it be deleted without effectively, you know, altering the rational of the Court sure it can because the Court said these procedures do not comport with the plan. And the procedures did not entail the acquisition of third-party claims via a settlement of preference actions. It just didn't. It was a large scale Woodbridge, we're sending a notice to everybody and getting a bump.

THE COURT: So, what is your answer to the annoying question that I asked your colleague about. In order to acquire these claims -- we've got a post-bankruptcy entity. It decides its good for the beneficiaries of the trust if it does this. So, it goes and does this. It doesn't come get Court approval. Why is it any different than the reorganized debtor going into a new line of business?

MR. DELANEY: I don't think that is an annoying question. I think it's a great question.

THE COURT: That will get you very far.

(Laughter)

MR. DELANEY: You know, I think there's kind of two points that I make. In fact, I made notes because I thought it was a good question.

The first is the trust is a creature that exists solely within the confines of that trust agreement, four corners. Nowhere in the trust agreement does it say that it can acquire third-party claims; nowhere. Now, you can say its inferred from certain authority, but equally true there's very contrary provisions in the plan that make it seem inconsistent to interpret the trust agreement that way including, I think, most importantly to this question you're presenting, the fact that proceeds from the prosecution of third-party claims acquired by the trust do not constitute "assets" under the plan and, thus, are not distributable to beneficiaries of the trust.

So, when we're talking about, you know, these very valuable claims they may have monetary value in an objective sense, but I don't see how they're beneficial to the beneficiaries of the trust. Further, you know, I think there has been always this undercurrent of, well, we need to do this or else all these defendants are going to get off scot free. I think that is kind of untrue. The defendants are the defendants. If they want to get sued -- there's a pending class action against Uphold arising out of these

sorts of claims.

Its ridiculous to suggest that the sole way these creditors are going to get compensated on their claims is by assigning them to the trust. Its just not a necessity under the trust. It cannot -- I don't feel any reasonably extrapolated from the terms of the trust agreement. Again, the trust is bound by the four corners of the document which does not say, does not say acquired.

In fact, you know, Judge Dorsey noted that nowhere in the plan or trust agreement does it say that they can acquire third-party claims; nowhere. There is this adjudication clause. I mean how hard would it be to say, you know, powers of the trust acquire third-party claims. This would have resolved everything. It doesn't say acquired. It says adjudicate third-party claims which in this context only means third-party claims that constitute "assets."

If you look at the definition of assets under the plan it does include third-party claims, but is third-party claims of the debtors and the estate. So, to say that the right to adjudicate means acquire seems inconsistent with that definition.

What we believe the proper reading of that clause is, is confirming that the trust has the ability to adjudicate, prosecute the third-party claims that constitute liquidation trust assets; those third-party claims that the

debtors and the estate had prior to confirmation.

So, you know, I think that when -- I apologize, I know I have gone a little off task, but in answer to your question do they need authority? Only if -- I think the answer to that is yes, they do need authority. They need authority in the trust agreement. Here, they don't have it. I think the Court was pretty clear before that nowhere in the trust agreement does it say they inquire third-party claims. The Court, in fact, said that the Court was inferring the ability to acquire third-party claims via settlement; not finding that they had this authority under the four corners of the trust agreement.

Further, we didn't have any evidence at the time about what the intention was of the debtors, the plan proponents, when they put in this adjudication clause. All we had was representation of the trust counsel, which was previously the committee counsel, saying that there was a bunch of back and forth, and that they demanded this, and this is what they thought it meant. But there was no actual evidence other than his representation.

So, I think that that is a little problematic, from my perspective, on finding that that is what it means.it means.

THE COURT: Okay.

MR. DELANEY: But, you know, if we were to

interpret this, I think that there is kind of a couple issues beyond whether or not this is teed up correctly. I am setting that aside. They can, obviously, fix that. We can file additional briefing, whatever, and we can continue the hearing.

I think there is, as noted by counsel for Lockton, this is a vague provision, we need evidence. So, we need time for discovery. So, if we're going to consider this --

THE COURT: I understand your position on that.

MR. DELANEY: I think the next one is considering the question of whether or not the interpretation would entail a modification of the plan because I think to establish a benefit for beneficiaries, we're going to have to either alter definitions under the plan or we're going to have to change the assets that are distributable to beneficiaries of the trust. We feel that, you know, we are going to have to tackle that question in some way shape or form. I suppose that can be at an interpretation hearing, but I think its an issue that we need to address.

As counsel for Lockton noted, there was a host of other issues that were identified by the Court including the disclosure issues. I think that from our standpoint the disclosure issues are kind of important. We are a beneficiary.

THE COURT: So, can I ask this question: Imagine

we've got a liquidating trust that inherits, under the plan, the debtors receivables, okay. The plan doesn't say anything about the trust becoming a plaintiff in State Court. Trust sues to collect an unpaid receivable in State Court. Defendant removes that action and says there's a federal question here, Judge, because there is nothing in the plan that says the trust can be a plaintiff in State Court. The trust comes to Bankruptcy Court and says, Judge, come on, I don't need that language, but to the extent I need that language give me that language.

What should the Judge do in that case?

MR. DELANEY: Your Honor, we don't have a position on the jurisdictional issue. I mean that is not --

THE COURT: No, I understand that. I'm not asking you to resolve the jurisdictional issue. I am asking you to address what is fundamentally, what I think, is a lot the question in front of me which is the trust is taking some action. It's an action -- I know you may not agree with this, but let's, for the purposes of the question, assume that its an action that seems plausibly to run to the benefit of the beneficiaries of the trust who are the original creditors.

You have got, you know, the target of that lawsuit pointing to provisions of the trust agreement to say you need an express provision to authorize you to do that. Like why

does this make sense?

MR. DELANEY: Your Honor, I think I would agree with your -- I would disagree with your example a little bit. I don't think it's a hypothetical that is necessarily on all four points with us because in your hypothetical the trust was authorized, ostensibly, to collect on the AR which may, in certain circumstances, require a lawsuit. Here, we are talking about acquiring new assets.

THE COURT: I understand.

MR. DELANEY: I think that that is the difference. Like we said, I have no -- my client has no objection to them prosecuting third-party claims that were assets of the estate or the debtors. That is clearly authorized under the plan. We do not quibble with that. We do not object to that. The plan does not say, however, that they can acquire third-party claims. And no finding on that has ever really been made.

That is really what I have to come back to, the clarification. There is nothing to clarify. So, that is kind of our position. There is nothing to clarify. So, this is really an improper motion in that regard.

I think one other point or, I guess, two more points. I appreciate your time, Your Honor. So, two more points.

So, first, I don't view this motion as seeking limited or innocuous relief. The proposed order provides

that they want the Court to find that they have the authority to acquire, really, any third-party claim pursuant to a preference settlement. That wasn't the finding of the Court before, but setting that aside that is pretty broad relief. That isn't limited to Lockton. That could affect my client. That could affect other parties. It is pretty broad relief.

The circumstances in which this motion comes before the Court is a little suspect. They brought this motion only after the notice removal was filed. Yet, they have apparently been acquiring claims.

THE COURT: Right, because they thought they had the authority to do it and didn't need anything further from the Bankruptcy Court.

MR. DELANEY: I suppose that is true, Your Honor, but still at the same time they were almost, you know, suggested by the Court to file a subsequent motion. They were -- it was, you know, I think, pretty strongly suggested that they reach out to the other parties to discuss procedures that might be workable.

We were never contacted. You know, back shortly after that first hearing we reached out to the U.S. Trustee because we had not been contacted to see if they had been contacted. And they had not been contacted at that time.

We are a beneficiary of the trust. We received no disclosures about what the trust is doing. We asked for that

information which, you know, we believe they're obligated to provide to us under applicable law. They said no. So, I mean, we are really at a loss as to what is going on. And, you know, we feel that -- you know, I think that that is something that beyond the relief directly requested in this motion is kind of problematic and its not just limited to this motion.

There is -- and we attached a transcript from another hearing in the lawsuit that we're involved in where it came to light, for the first time ever, that the trust is settling claims with principal responsible parties without any disclosure to anybody. I mean, its -- we find it a little troubling.

You know, going back to the scope of the readings we don't see it as innocuous. I mean this is pretty broad relief that they are requesting. And, frankly, it almost rises to the level of an advisory opinion that they can acquire almost any claim via preference without regard to whether or not the claim is valid, whether or not the preference is valid, and who knows what they are doing with the claim that is asserted against the estate, how they're allowing it, whether or not they're disregarding valid objections to that claim.

So, I mean there aren't implications for beneficiaries because if they just set this aside, if they

set aside the idea of third-party claims and prosecuted preference actions against these people, and objected to claims that might result in that party having no claim and turning over significant money to the estate.

But they are getting a third-party claim in exchange for what, we don't know, but it could be the full allowance of an invalid claim, it could be the release of a very valuable preference claim in exchange for what, a third-party claim that may have no value.

So, I think that the opacity of the process is troubling. And I don't think that the relief requested, you know, should be granted because it could be broadly applied in a lot of circumstances. So, I think we find that to be improper.

The last thing, very quickly, we do think notice of this motion is deficient. Under Local Rule 2002-(1)(b) the relief requested may effect a large number of potential targets of litigation, but they only served it on the 2002 list. In response, the trustee said, well, we served on everybody that we served the procedures motion on which doesn't really help them considering that the Court found that the procedure motion notice was deficient.

We think that this motion, if its going to be heard, should be served on everybody. Everybody should receive notice of a motion to interpret the plan that

everybody voted for and given them a fair opportunity to weigh-in on it.

With that, Your Honor, if you have any questions; otherwise, I will cede the podium.

THE COURT: Okay. Thank you very much. I appreciate it.

MR. DELANEY: Thank you, Your Honor. I appreciate the time.

MS. SOMERS: Your Honor, I think what's happening here is the objectors see that there is a very clear path to what happened here. So, the style of argument is kind of like a filibuster. Let me just throw everything out, stir everything up, see where I can get.

THE COURT: Can I ask you this one question?

MS. SOMERS: Yes.

THE COURT: Does the trust take the position that to the extent you recover on any of these assigned claims that you are going to do anything with those proceeds other then distribute them pro rata to the Court.

MS. SOMERS: We're going to distribute them pro rata to the Court.

THE COURT: Okay.

MS. SOMERS: First of all, I'd like to start with many things that Uphold's counsel said are a little bit exacerbating, most of them are, that they have taken

arguments made to the Court or questions that the Court asked and turn them into decisions of the Court. When we say something is a ruling, we are referring to a ruling. We are not taking all the arguments and claiming that that was the ruling.

The provision that they keep saying does not give the right to acquire says that there is a right to -- the trust is allowed, one of its powers is adjudicating third-party claims assigned, purchased, or, otherwise, transferred to the liquidation trust. And I am not really here to re-argue the plan argument because that is the general counsel's job, but I do feel like I have to clarify some of this stuff.

In addition, the causes of action includes third-party claims that are instituted after the effective date. And instituted can be many things including acquired or implemented. In addition, Exhibit A to the plan specifically talks about tort claims and doesn't identify them as third-party or debtor claims, but says all tort claims are covered. And there are many, many other provisions of the plan that support the Judge's decision, not our argument that he made.

In addition, the proposed order submitted in conjunction with the assignment order had a specific provision saying that the claims of -- that assigned claims could be adjudicated. So, as many times as they want to say this was not a central issue, it was a central issue. And if

you look at the papers of Uphold and the other parties they say it's a central issue.

The whole talk about disparate treatment and the points to that effect the Judge did consider those and then he said, hey, I don't have a problem with them when it comes to a preference. Yeah, disparate treatment could be a problem in many contexts, but I don't have a problem when it comes to a preference. In addition, although they're constantly citing the concerns of the U.S. Trustee, the U.S. Trustees Office contacted us and told us they take no position on this clarification.

In addition to that, they bring up the issue of extrinsic evidence. And at one point the committee counsel even offered to give the Judge extrinsic evidence. That is -- I will find it, I believe its page 49 of the transcript. Rather than say, yes, you know, we need to take extrinsic evidence, the Judge came right back a few lines later and said I have no problem with this when it comes to preferences. Its okay in a preference context.

So, anything the Judge said about leaving things for another day or more notice needed was in conjunction with the soliciting through a portal. The Judge articulated some concerns and said if you're going to change this you got to come back to me, you know, I will reconsider it at that time.

I do not find the transcript to find that notice

was improper. This is just another one of those things that the Court asked a question about that somehow Uphold's counsel has transferred into a ruling.

The Judge's decision on the preference settlement was basically a decision that talked about what the trust agreement allowed in and of itself. Exactly as Your Honor has referred to it, like what are the confines, what can the trust do on its own. The Court said the trust can acquire and adjudicate claims, and the trust said you can do it in a preference context.

So rather than coming back to Court and trying to recreate a motion the trust said let's be conservative. These are the two ways that the Judge said we can acquire claims, let's just acquire them in this way. And that limited the amount of claims that could be acquired, but the trust accepted that as the Judge's ruling, and the easiest way, and the most seamless way to have claims transferred to the trust without anyone raising any questions.

Low and behold, questions have been raised. Its not surprising they're raised. They're raised because these are defendants and they don't want a party who has the wherewithal to pursue the claims to pursue them.

I think that was it. Let me just see if there was any other point.

(Pause)

MS. SOMERS: I think that's it, Your Honor. Thank you.

THE COURT: Thank you.

I think I am prepared to rule. So, the trustees of the Cred Inc., liquidation trust now ask the Court to clarify its July 19th, 2022 bench ruling. For the reason I am going to describe, I am satisfied that the trust's interpretation of that ruling is correct.

The Court denied the trustees motion to offer a 10 percent increase or bump-up of a signor's allowed claims in exchange for an assignment of the creditors claims to the liquidation trust. Having reviewed the record, the trustees motion will be granted because the Court is satisfied that the Court, essentially, determined at that hearing that the trustees can acquire third-party claims obtained through individual settlements and that valid grounds exist to pursue those claims against defendants. I will explain that in a little bit more detail.

So, Cred Inc., and its affiliates who are the debtors, filed for bankruptcy in November 2020. Judge Dorsey approved the debtors combined joint plan of liquidation and disclosure statement on March 11th, 2021. The plan became effective in April 2021. Under the plan, once the debtors assets were transferred to the liquidation trust, the liquidation trustees became responsible for liquidating the

assets and taking actions on behalf of the trust. The trust agreement also says that the trustees have the responsibility to adjudicate third-party claims assigned, purchased, or, otherwise, transferred to the liquidation trust.

On July -- I'm sorry, in June of 2022 the trustees moved the Court basically raising two questions. First, whether the plan and trust agreement would authorize the trust to acquire claims from creditors. Second, whether the trust proposed assignment here would be an impermissible modification of the plan. That was the questions -- those were the questions teed up for the hearing in July of 2022. The Court denied the motion without prejudice.

In December, in California State Court, the trustees brought a lawsuit against Lockton Companies, asserting state law claims that included fraudulent misrepresentation, fraud in the inducement, negligent misrepresentation, etc., and claims under California Unfair Competition Law.

The trust asserted those claims on behalf of customers who had assigned their claims to the trust. Lockton removed that action to District Court claiming it was related to this bankruptcy case. The notice of removal points to different basis for related to jurisdiction including that claims themselves belonged to the bankruptcy estate, that the trust didn't have the authority to acquire

the claims, and that there was a need to construe this Court's orders.

Before the Court today is the trustees motion to clarify what the Court said in July of 2022. Lockton has objected to that motion. Uphold HQ has filed a joinder in the Lockton objection. I am satisfied I've got jurisdiction to hear this dispute under 28 U.S.C Section 1334(b) and the principal that the Supreme Court articulated in Travelers that a Court always has the authority to construe its prior orders.

First, a word on standing. I am not going to find that the objecting parties lack standing and, therefore, throw out -- grant the relief as if it were unobjected to because no party with standing has objected. I am going to hear this on the merits.

I will say, however, that the circumstances certainly are reason to pause. What we have got here is, essentially, a dispute about a trust agreement created under a plan. The parties who are the -- the trust agreement is intended to set forth the rights as between and among the beneficiaries of the trust and the trustee.

When the trust takes action against a third-party -- for a third-party defendant to object to the trust action on the grounds that the trust action is not authorized by the trust seems to be, essentially, outside the zone of interest

that were intended to be protected by the trust document. They are, essentially, invoking the rights of other parties.

I am, nevertheless, going to hear it because it was here joined by someone who is a creditor and that creditor happens also to be a defendant. The argument is that that that creditor, Uphold, is acting in its capacity as defendant, not its capacity as creditor. I will say only I don't think it's really within the traditional judicial role to get inside the head of a party whose making an argument, and second guess the reasons they're making it.

I will say that the facts are that if they were to prevail it would benefit the creditor in its capacity as defendant and not in its capacity as creditor. The only argument I heard as to why, in its creditor capacity, it would be benefited is this contention that, well, maybe the proceeds of these actions won't be distributed to it, but the trustee has disclaimed that.

So, I am not going to throw-out the argument on the grounds of standing, but I will say that it strikes me as dubious that the defendants, in an action initiated by the trust, ought to be permitted to invoke limitations set forth in the trust document that are there to benefit the beneficiaries of the trust, not the targets of the trust action.

I will also say that all of this feels to me like

something of a tempest in a tea pot because I am not sure -- it would be one thing if there was a trust agreement that said the trust shall not do X. There is no contention that there is language in this trust agreement that says the trust may not acquire third-party claims.

Its not at all obvious to me that it is that it shouldn't be, essentially, implicit that the trust can accept as prohibited by the trust can't, otherwise, exercise its own business judgement to serve the purposes of the trust which is to maximize the recovery to creditors. And its not at all obvious to me that this so-called clarification should even be necessary but for the defendants inserting that issue into the California litigation. And in view of the fact that they have, as the Court presiding over the bankruptcy case out of which the trust was created, it does seem to me appropriate to offer a clarification.

I want to address the notion that notice of this motion was not appropriate. I am not -- let me say this, the parties who are here, and have shown-up to object have received sufficient notice to appear and object. To the extent the order that I enter binds someone who didn't receive notice and they want to come in and say that I shouldn't be bound by that order because I lack notice, nothing I am saying today precludes that at all.

Relief anyone gets from any Court is only as good

as the notice you provide. And if there is anyone who didn't get appropriate notice will hear them on the merits as to why that relief shouldn't affect them. So, I have gone and reviewed the transcript of the July 19th hearing and based on that review and the reasons I have set forth above I am satisfied that it is correct to say that the trustees can acquire third-party claims obtained through individual preference settlements. And if valid grounds exist, prosecute those claims against defendants.

The objections to the trustees motion characterize it as one that seeks to somehow alter what the plan does. They contend that the Court can't resolve an ambiguity in the plan without an evidentiary hearing in which the Court would consider an effect of parole evidence about what the drafters of the plan intended. But its clear, from a review of the July 19th, 2022 bench ruling, that Judge Dorsey didn't think such evidence was required in order to reach the conclusion that I reached today.

He said, and I'm just going to quote it:

"I think everyone is pretty clear on where I stand on this. I think in terms of the authority of the trust to acquire third-party claims, although it was not completely clear in the plan or the trust agreement, I think it was certainly implied that the trust would seek, could seek, or could obtain assignment of third-party claims it could then

pursue on behalf of all creditors of the estate."

He said that he was disinclined to say that he would allow the trust to give a blanket 10 percent bump to anybody who assigned their claims to the trust and, therefore, deny the claim without prejudice. But during the hearing the Court asked if there are valuable third-party claims out there nobody is going to be able to pursue them because they can't afford to. And the trustee has the opportunity to go acquire the claims and pursue them for the benefit of every creditor of the estate then why could that not be done.

What he -- what Judge Dorsey went onto say at that hearing, essentially, answered that question by saying on the record that the trust would and could acquire third-party claims because that authority is implied in the existing documents. Indeed, the Court said that the authority to acquire and pursue those claims didn't need to be stated expressly in the plan or trust agreement which is, essentially, unsurprisingly I am not saying anything that I don't think Judge Dorsey hasn't, essentially, said already.

In sum, I am satisfied that the trust construction on both of the documents and of the what the Court decided is correct. I will, therefore, grant the motion.

I will add only to the extent there is an objection about the opacity of the way the trust is

conducting the business of the trust, you know, there the plan and trust documents control and to the extent a beneficiary, in its capacity as beneficiary, wants to raise such a point that can be raised by appropriate motion, but that I don't believe that those concerns are a reason not to grant the motion that is now before me. So, we will go ahead and enter an appropriate order.

I know that when I rule one of the things I have learned is that I don't make everybody happy. So, my question isn't is everyone thrilled. Does anyone have questions about that or is there anything else that I can do that would be helpful or constructive in terms of giving guidance?

(No verbal response)

THE COURT: Okay. If not, we will go ahead and enter an appropriate order. With that we are adjourned. Thank you.

(Proceedings concluded at 3:13 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ Mary Zajaczkowski February 9, 2023

Mary Zajaczkowski, CET-531

Certified Court Transcriptionist

For Reliable

/s/ Coleen Rand February 9, 2023

Coleen Rand, CET-341

Certified Court Transcriptionist

For Reliable